

# EXHIBIT

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1	<u>EXAMINATION INDEX</u>	
2	<u>PLAINTIFFS' EVIDENCE (CONTINUED)</u>	
3	ANNA CAMPBELL, Ph.D.	
4	DIRECT BY MR. ELSEVIER	8
5	CROSS BY MR. BREISBLATT	20
6	CROSS BY MR. STIMART	22
7	LEONORE WITCHEY-LAKSHMANAN, Ph.D.	
8	DIRECT BY MR. ELSEVIER	35
9	CROSS BY MR. BREISBLATT	67
10	CROSS BY MR. STIMART	78
11	REDIRECT BY MR. ELSEVIER	122
12	RECROSS BY MR. BREISBLATT	135
13	RECROSS BY MR. STIMART	142
14	JESSICA COBBS	
15	DIRECT BY MR. TOLLEY	155
16	CROSS BY MR. BREISBLATT	161
17	CROSS BY MR. GRAVES	180
18	REDIRECT BY MR. TOLLEY	182
19	MATTHEW HOWELL	
20	DIRECT BY MR. TOLLEY	187
21	CROSS BY MR. CALLAHAN	240
22	REDIRECT BY MR. TOLLEY	250
23	RECROSS BY MR. CALLAHAN	250
24	DENNIS STEADMAN	
25	CROSS BY MR. SMITH	257
	DIRECT BY MR. GRAVES	329
	DIRECT BY MR. BREISBLATT	343
	RECROSS BY MR. SMITH	345

1 until you get finished. All right?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. We'll be in recess for at least 15  
4 minutes.

5 (Recess taken for another matter to be hear.)

6 THE COURT: Be seated.

7 Okay. Let's resume with Mr. Stimart's  
8 cross-examination of the witness.

9 MR. STIMART: Thank you, Your Honor.

10 BY MR. STIMART:

11 Q. Doctor, on direct examination, do you recall counsel asking  
12 you about various properties that inert ingredients might have  
13 on the formulation?

14 A. If by "properties" you mean "functions," yes.

15 Q. "Functions" is fine. And let's go through that list and  
16 correct me — tell me if I got this correctly or if I'm missing  
17 one or added something to it.

18 I believe you mentioned efficacy?

19 A. Not — I'm sorry, I'm...

20 Q. Could an inactive ingredient impact efficacy of a  
21 formulation with a pesticide?

22 A. It could assist the active ingredient to be available to be  
23 efficacious, if that's what you mean.

24 Q. So it could affect efficacy.

25 A. Of the active ingredient.

1 Q. Right. That's my question. You agree with that?

2 A. I would agree with that in general.

3 Q. It could also affect dissolution of the formulation;  
4 correct?

5 A. Yes, it could. You need to choose your formulations  
6 judiciously to allow the product to be efficacious.

7 Q. It could also affect penetration of the active ingredient  
8 onto the — onto the animal, for example?

9 A. Depending on the product that you're developing, you would  
10 perhaps consider a penetration enhancer, yes.

11 Q. You also mentioned delivery. Is that is — were you — is  
12 delivery the same thing?

13 A. Delivery is a broader term. The application, the actual  
14 administration for the product, depending on what its need is,  
15 yeah.

16 Q. And I believe you also mentioned metabolism. Is that  
17 right?

18 A. Yes.

19 Q. What about aesthetics? Is the aesthetic quality of a  
20 formulation also something that could be impacted by the inert  
21 or inactive ingredients?

22 A. Yes.

23 Q. And by aesthetics, for example, odor. You don't want  
24 something that —

25 A. It could be odor.

1 Q. I'm sorry. I didn't mean to interrupt you.

2 A. Yes, it could be odor.

3 Q. You don't want a product on the back of an animal -- a cat,  
4 a dog, whatever it might be -- to smell, to be a bad-smelling  
5 product.

6 A. An offensive smell may not -- may be something that you're  
7 not particularly interested in, yes.

8 Q. And also in terms of aesthetics, you don't want to have the  
9 hair on the dog or the cat, for example, to be clumpy and  
10 matty; right?

11 A. You would prefer it not be, yes.

12 Q. That's an aesthetic quality?

13 A. It would be considered part of the aesthetics of the  
14 product.

15 Q. And just so I understand, the -- what you put in, aside  
16 from the active ingredients, could impact that; correct?

17 A. It could.

18 Q. And I think you just said, in one of your answers, that  
19 it's important to judiciously pick the inactive ingredients for  
20 a formulation. Is that right?

21 A. Yes, that's correct.

22 Q. So a lot of time and thought and energy go into that, on  
23 what should be picked for a formulation.

24 A. It may.

25 Q. Have you done that, formulation picking inactive

1 substantially similar or identical to the FRONTLINE products so  
2 that you could accelerate the EPA regulatory approval process;  
3 right?

4 A. Exactly.

5 Q. Thank you.

6 Now, let's take a look at paragraph 19 of your  
7 declaration.

8 Now, here you say that "Commercial manufacture of PetArmor  
9 Plus began one month after EPA approval was issued." That  
10 would have been in February of this year?

11 A. That's correct.

12 Q. First import was March 2011?

13 A. That's correct.

14 Q. First retail availability, April 11, 2011?

15 A. Week of April 11, yeah.

16 Q. Those products are currently available in Georgia. Are  
17 they not, sir?

18 A. Yes, they are, as far as I know, yeah, unless they're out  
19 of stock.

20 Q. And at the time you went commercial, if you will, with the  
21 PetArmor Plus products, you were aware of this Court's  
22 injunction, were you not?

23 A. Yes, we were.

24 Q. You were aware of the 329 patent, were you not?

25 A. Yes, we were.

1 Q. You did not at any point in time ever approach the Court to  
2 ask for any interpretation or relief from the order, did you,  
3 sir?

4 A. No, we did not.

5 THE COURT: What did you —

6 A. We had an assessment —

7 THE COURT: What did you think the order meant? Did  
8 you think it meant that — why did you think y'all were in the  
9 clear as far as the order was concerned? Is it that you  
10 just — you let your lawyers look at it and they gave you that  
11 advice or —

12 THE WITNESS: Well, they —

13 THE COURT: I don't want you to tell me specifically  
14 what they said, but you made a conscious decision at some point  
15 that this product was not contrary to the Court's order, was  
16 not enjoined by the Court's order. Was that just that you  
17 turned it over to your lawyers and said, "Can we proceed"?

18 THE WITNESS: Well, we did seek our lawyers' input  
19 and counsel, certainly. It was my understanding that we did  
20 not — we were not a subject of this injunction. And I've  
21 already said that we did not need to respect the 329 patent  
22 because of its invalidity in our eyes and that the manufacture  
23 of this product to our specifications, customized in particular  
24 to us, in India and sold in India, was not necessarily a  
25 violation of the 329 patent, as I understand the law. And so